D.P.U. 94-50

Petition of New England Telephone and Telegraph Company d/b/a NYNEX for an Alternative Regulatory Plan for the Company's Massachusetts intrastate telecommunications services.

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ORDER ON APPEAL BY MARK BROWN OF
HEARING OFFICER RULING
DENYING LATE-FILED PETITION TO INTERVENE

I. INTRODUCTION

On April 14, 1994, New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX") filed with the Department of Public Utilities ("Department") a petition for approval of its Alternative Regulatory Plan ("Plan") for NYNEX's Massachusetts intrastate operations. The case was docketed as D.P.U. 94-50. On April 27, 1994, the Department issued an Order of Notice setting May 11, 1994 as the deadline for petitions to intervene. The Hearing Officer issued a procedural notice setting May 20, 1994 as the deadline for motions on the scope of the proceeding.

On June 3, 1994, Mark Brown filed a petition to intervene. In support of his petition, he asserted that: (1) NYNEX's rates adversely affect ratepayers outside the 20-mile radius surrounding Boston; (2) there is no justification for NYNEX's failure to offer Metropolitan Service to residential ratepayers beyond the 20-mile radius surrounding Boston; and (3) the Attorney General of the Commonwealth ("Attorney General") is not adequately representing his interest.

On June 21, 1994, the Hearing Officers denied Mr. Brown's late-filed petition to intervene because: (1) he failed to adequately demonstrate that he would be "substantially and specifically" affected by this proceeding; and (2) his only issue of concern, Metropolitan Service, is beyond the scope of the proceeding. (Hearing Officer's Ruling Denying Brown's Late-filed Petition to Intervene, at 4 (June 21, 1994)). In addition, the Hearing Officers found that even if Mr. Brown

identified issues within the scope of the proceeding and demonstrated that the Attorney General did not intend to focus on such issues, such a claim would not entitle him to full intervenor status. Id. However, the Hearing Officers granted Mr. Brown limited participant status and set June 23, 1994 as the deadline for an appeal of the Ruling. Id. at 5.

On June 23, 1994, Mr. Brown sent a facsimile to the Hearing Officer in an attempt to appeal the Ruling. The Hearing Officer responded to Mr. Brown's facsimile by letter, indicating that there were several serious impediments to the Department's consideration of the submission. The Hearing Officer indicated that: (1) the submission did not clearly articulate arguments in support of an appeal; (2) certain comprehensible arguments were outside of the scope of this proceeding; and (3) the tenor of the submission was unacceptable[1]. In addition, the Hearing Officer stated that the submission was improper in form.[2] The Hearing Officer gave Mr. Brown until 5:00 p.m., June 28, 1994 to amend his submission and properly file and serve an appeal.

On June 28, 1994, Mr. Brown submitted by facsimile, an appeal of the Ruling and a motion to expand the scope of the proceeding ("Appeal"). On June 30, 1994, NYNEX filed a response in opposition to the Appeal.

II. STANDARD OF REVIEW

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[1] The Hearing Officer noted that Mr. Brown had previously been put on notice by hearing officer letter dated May 2, 1991 regarding D.P.U. 91-68, that it was inappropriate to use a pleading as a forum for personal opinion or derogatory comments, and that abuse of procedure could be grounds for denial of relief.

[2] The submission was neither signed, filed with the Secretary of the Department, nor accompanied by proof of service as required by the Department's procedural rules. The Hearing Officer also enclosed with the letter a copy of the rules, service list and ground rules for the proceeding.

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. § 1.03 (1)(b); see also G.L. c. 30A, § 10. The Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45, cert. denied, 439 U.S. 921 (1978). Furthermore, in Boston Edison, the Court directed the Department to be mindful that the extensive participation by an individual ratepayer may burden a proceeding and should only be permitted, "if careful consideration discloses special circumstances in justification." Boston Edison, 375 Mass. at 46.

In ruling on petitions to intervene, the Department must balance the extent of participation against the need to conduct a proceeding in a complete, efficient, and orderly fashion. See New England Telephone and Telegraph Company, D.P.U. 89-300, at 5 (1990). When presented with a late-filed petition to intervene, the Department also considers: (1) the extent of the delay; (2) the effect of the late participation on the ongoing proceeding; and (3) the explanation for the tardiness. Western Massachusetts Electric Company, D.P.U. 92-8C-A (Order on Appeal by Massachusetts Municipal Wholesale Electric Company of Hearing Officer Ruling Denying Late Petition to Intervene, at 5 (June 25, 1993)).

The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a

proceeding before the Department will exercise its discretion and grant limited participation. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Boston Edison, 375 Mass. at 45.

III. POSITIONS OF THE PARTIES

A. Mr. Brown

In his Appeal, Mr. Brown argues that he should be granted full intervenor status (Appeal at 1). The Appeal restates and expands on arguments made in the late-filed petition to intervene. Mr. Brown again asserts his interest in the expansion of the Metropolitan Service (id. at 1). He additionally raises other issues not stated in the late-filed petition such as: (1) availability and accessibility of information regarding NYNEX's cable system;
(2) the requirements of the Department's procedural rules regarding filings; and (3) accessibility of Department files to the public (id. at 1, 4-5). Mr. Brown also alleges problems with the Attorney General's Office (id. at 4-6). Mr. Brown further argues that the scope of the case -- price cap regulation -- is not of interest to ratepayers and is wasteful (id. at 2,5).

B. NYNEX

In opposition to Mr. Brown's Appeal, NYNEX asserts that Mr. Brown has failed to identify any issues within the scope of the proceeding which would warrant a grant of full intervenor status (NYNEX Response at 3). Furthermore, NYNEX contends that Mr. Brown has not adequately demonstrated how he would be "substantially and specifically affected" by the proceeding (id.). Therefore, NYNEX contends that there is no basis for overturning the Ruling (id. at 4)

IV. ANALYSIS AND FINDINGS

According to the Department's procedural rules, all pleadings must be signed and proof of service must accompany papers when filed. 220 C.M.R. §§ 1.03(6), (8); 1.05(1)(b). Although these rules were provided to Mr. Brown with the Hearing Officer letter dated June 24, 1994, Mr. Brown's Appeal was not signed and proof of service was not filed. Thus, the Appeal could be denied on those grounds alone. We will, nonetheless, address Mr. Brown's appeal.

The Hearing Officers' decision to limit Mr. Brown's participation is consistent with precedent, the orderly conduct of proceedings before the Department, and the guidance given to the Department by the Supreme Judicial Court in Boston Edison. Mr. Brown is an individual ratepayer representing only himself. The Attorney General, however, is actively participating in this case on behalf of ratepayers. In this case, the issues raised in Mr. Brown's Appeal are beyond the scope of the proceeding. Furthermore, Mr. Brown has not demonstrated such a high degree of expertise on matters relevant to this proceeding that the Department's review would suffer from limiting his participation. Therefore, we find that the Hearing Officer's ruling allowing Mr. Brown to be a limited participant, rather than a full intervenor, is a proper exercise of the Department's discretion and is consistent with the purpose and efficient conduct of this proceeding. Accordingly, we deny his Appeal of the Ruling.

With respect to Mr. Brown's motion to increase the scope of this proceeding, we note that the Hearing Officer established a deadline for motions on scope of May 20, 1994. Mr. Brown's June 28, 1994 Motion to Increase the Scope of the Proceeding is untimely, therefore, we hereby deny the motion.

In addition, it is important to understand that the appellant has been cautioned repeatedly regarding the tenor of his comments and abuse of procedure. While we have granted Mr. Brown the status of a limited participant in this proceeding, the Department hereby places him on notice that any additional behavior not consistent with standards of acceptable decorum and practice will result in the Hearing Officer vacating the ruling granting him status as a limited participant.

V. ORDER

Accordingly, after due consideration, it is hereby

ORDERED: That the June 28, 1994 Appeal of Denial of Full Intervenor Status be and hereby is DENIED; and it is

FURTHER ORDERED: That the June 28, 1994 Motion to Increase the Scope of the Proceeding be and hereby is DENIED.

By Order of the Department,

_____
Kenneth Gordon, Chairman

_____
Barbara Kates Garnick, Commissioner

_____
Mary Clark Webster, Commissioner